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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE
Preparatory Committee
Second session
Geneva, 21 May-1 June 2001

Item 6 of the provisional agenda

REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Contribution of the Human Rights Committee to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Note by the Secretary-General

In its resolution 2000/14 of 17 April 2000, the Commission on Human Rights invited United Nations bodies and mechanisms dealing with the question of racism, racial discrimination, xenophobia and related intolerance to participate actively in the preparatory process for the World Conference (para. 66). The General Assembly, at its fifty-fourth session, also requested human rights mechanisms to assist the Preparatory Committee and to undertake reviews and submit recommendations concerning the World Conference and the preparations therefor to the Preparatory Committee, through the Secretary-General, and to participate actively in the Conference (resolution 54/154, para. 37). Accordingly, a contribution has been received from the Human Rights Committee consisting of a general outline of Committee activities inasmuch as they are designed to help combat racism, racial discrimination, xenophobia and racial intolerance and of three annexes: (1) compilations of excerpts of relevant Committee decisions under the Optional Protocol to the International Covenant on Civil and Political Rights, (2) excerpts of relevant concluding observations on State reports under article 40 of the International Covenant on Civil and Political Rights, and (3) relevant General Comments adopted by the Committee.

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Annex

1. The Human Rights Committee shares the concern of the international community that racism continues to be a scourge on humanity and to jeopardize peace and security in the world. As a contribution to the Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Committee has prepared a compilation of materials reflecting the work of the Committee under the International Covenant on Civil and Political Rights in relation to racism and connected issues.

2. The Committee has considered reports under article 40 of the Covenant from several States parties with significant problems of racial discrimination and concerning the protection of indigenous and other cultural, religious and linguistic minorities.

3. Under the communications procedure governed by the Optional Protocol to the International Covenant on Civil and Political Rights, there have been few cases which directly raised issues of racial discrimination. The Committee has, however, dealt with a number of communications in which the rights of members of indigenous minorities to the enjoyment of their culture and traditional economic activities were considered and defined. The Committee has also considered whether restrictions on freedom of expression could be justified to protect members of a minority from incitement to discrimination, hostility or violence arising from racial or religious hatred.

4. The work of the Human Rights Committee in the reporting process and under the communications procedure forms the basis of its General Comments, in which it sets out its views on the scope of the obligations of State parties under particular provisions of the Covenant. The Committee's general comments are intended as a guide to States parties in the performance of their obligations under the Covenant and in the preparation of reports under article 40. The general comments on discrimination (No. 18) and on the rights of minorities (No. 23), are of particular relevance to the consideration of racism and racial discrimination.

Overview of issues relating to racial discrimination

5. The intention is to bring to the attention of participants in the Preparatory Committee for the World Conference who may not be familiar with the Covenant or with the Committee's work the relevant provisions of the Covenant together with illustrations of Committee decisions that relate to racism and connected issues, such as the rights of persons belonging to ethnic, linguistic and religious minorities. Some of the issues surveyed by the Committee that relate to racial discrimination are summarized in the following paragraphs.

Guarantee of equality, articles 2.1 and 26

6. The rights protected by the Covenant must be ensured to all individuals, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (art. 2, para. 1, and art. 26). The entitlement, under article 2.1, to enjoy the rights under the Covenant without distinction applies to all individuals within the territory or under the jurisdiction of a State.

7. In order to fulfil the obligation to ensure rights to all persons, without distinction, States must not only refrain from discrimination but also take positive measures necessary to ensure the equal enjoyment of rights (GC No. 18, para. 10). In its General Comment No. 28 on article 3, a provision specifically addressed to the equal enjoyment of rights by women, the Committee stated:

> "The obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that State parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant." (para. 3)

8. Those observations apply also to the equal enjoyment of all Covenant rights without distinction on the ground of race or religion or other grounds specified in article 2.1.

9. The right to non-discrimination is not limited to the equal enjoyment of rights specified in the Covenant. By virtue of article 26, there is a right to protection against discrimination in law or in fact in any field regulated and protected by public authorities (GC No. 18, para. 12). Article 26 protects the right to equality before the law and equal protection of the law; it requires that discrimination be prohibited in the public and private sectors, and guarantees to all persons equal and effective protection against discrimination on any grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 thus provides an autonomous right to non-discrimination which governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers on individuals under its jurisdiction.

Meaning and scope of discrimination

10. The Committee considered the meaning and scope of discrimination in its General Comment No. 18. This General Comment defines discrimination under the Covenant in these terms:

> "the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (para. 7)

11. The Committee took into account the definitions of discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women in defining discrimination. (General Comment No. 18, paras. 6 and 7)

12. The test of whether a distinction amounts to discrimination prohibited by the Covenant was set out in General Comment No. 18 in these terms:

> "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". (para. 13)

13. In dealing with State party reports, the Committee has found that Constitutions and domestic legislation do not always adequately protect against discrimination on all grounds set out in articles 2.1 and 26.

Racial discrimination, articles 2.1 and 26

14. In its consideration of State parties' reports under article 40 of the Covenant, the Human Rights Committee has encountered situations where racism and intolerance are directed against minority groups, migrants or asylum-seekers. This discrimination is incompatible with the principle of equality and the equal enjoyment of rights. In some States, persistent and long-standing prejudice and discriminatory attitudes have led to lower standards of living and social exclusion for certain minority groups.

15. The Covenant requires States to take positive action to ensure equality and the Committee has recommended the adoption of effective legal measures to prohibit discrimination in public and private fields and to ensure effective remedies to the victims. It has also recommended that States take positive measures to remedy the effects of racism and discrimination, including such measures as community education and media campaigns to overcome racism and intolerance.

16. In respect of some States parties, allegations were made that police had abused their powers by ill-treating members of racial and ethnic minorities, or that they had failed to take action in respect of complaints of racial harassment or discrimination. The Covenant requires that victims be provided with effective remedies in respect of any such violations of their rights. It also requires States to take positive action to ensure equality. The Committee has recommended that States take action in respect of alleged violations by its police and security forces and that they introduce or expand the education and training of law enforcement officers and recruit members of minority groups into the forces.

17. The Committee has condemned gross violations of the rights of ethnic, religious and linguistic minorities in some countries, including massacres, mass expulsions ("ethnic cleansing"), summary or arbitrary executions, forced or involuntary disappearances, torture, arbitrary arrests, rape and pillage committed by security forces, militias and armed civilians. The Committee has urged the States concerned to take immediate and effective action to end the violations, to combat ethnic and racial hatred, and to bring the perpetrators to justice. It has recommended that prompt investigations be initiated to bring all those responsible for such violations to trial and that the victims be provided with remedies.

18. The Committee has observed that racism, racial discrimination and xenophobia contribute to discrimination against women and other violations of their rights, including the cross-border trafficking of women and children, and enforced prostitution and other forms of forced labour disguised *inter alia* as domestic or other kinds of personal service. The Committee has asked States to take measures, national and international, to protect women and children, including foreign women and children, from these violations of their rights. (General Comment No. 28, paras. 12 and 30)

Incitement to racial discrimination or violence

19. Article 20.2 of the Covenant requires States to take specific measures to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In its General Comment on article 20, the Committee expressed the view that for article 20 to become fully effective there ought to be a law making it clear that advocacy as described therein is contrary to public policy, and providing for an appropriate sanction in case of violation. In some cases the media has been used to incite hostility and violence among the various population groups in clear violation of the provisions of article 20 of the Covenant. The Committee has on several occasions had to call on States to take positive action to enforce the prohibition on incitement to discrimination, hostility or violence on racial grounds.

20. The connection between article 20.2 and religious freedom was considered by the Committee in its General Comment No. 22 on freedom of thought, conscience and religion (art. 18). The Committee observed that the measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. It also emphasized that, in accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. (General Comment No. 22 on article 18, paras. 7 and 9)

21. In the opinion of the Committee, the prohibitions required by article 20.2 are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The relationship between these two provisions was brought to the Committee's consideration in two cases, *Faurisson v. France* (550/1993, Views adopted 8 November 1996) and *Ross v. Canada* (736/1997, Views adopted on 18 October 2000), where restrictions on the authors' freedom of expression in connection with the publication and dissemination of anti-Semitic opinions, were held to be necessary and proportionate in order to protect the rights of members of the Jewish community from advocacy of racial or religious hatred and incitement to discrimination, hostility or violence (summaries annexed).

Related areas of discrimination, articles 2.1 and 26

22. Discrimination is sometimes based on grounds closely related to race, such as national origin or religion. The provisions of the Covenant and the work of the Committee on these related issues is relevant to the consideration of racism, racial discrimination and xenophobia.

23. A number of States make distinctions between citizens and aliens which are not justifiable; for example, they may expressly confer rights on citizens only. As the Committee made clear in paragraph 1 of its General Comment No. 15:

> "each State party must ensure the rights in the Covenant to 'all individuals within its territory and subject to its jurisdiction' (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness".

24. While there are some specific exceptions (e.g. political participation under article 25), aliens must benefit from the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant (General Comments No. 15, para. 2, and No. 27, paras. 4 and 18). Consequently, the general rule is that each one of the rights of the Covenant must be guaranteed, without discrimination between citizens and aliens.

25. Thus, in *Gueye v. France* (196/1985, Views adopted on 3 April 1989), the Committee held that it was not justifiable to give lesser pension entitlements to persons of Senegalese origin who had previously served in the French Armed Forces, on the ground that they were no longer French citizens. The change in nationality, resulting from the independence of Senegal, could not be itself sufficient justification for different treatment of the authors, since the basis for the pension was the same service which both they and the soldiers who remained French had provided.

26 Racial discrimination can be closely linked to religious intolerance and discrimination. In some countries long-standing conflict between groups of differing religions and ethnicity has contributed to serious violations of rights, including the massive violations referred to earlier.

27. In its General Comment on article 18, the Committee emphasized that freedom of thought, conscience and religion extends to all religions including minority religions and newly established religions:

> "Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a dominant religious community." (General Comment No. 22, para. 2)

28. The Covenant requires that there be no unjustifiable discrimination between religions in the provision of public funding for school education. *Waldman v. Canada* (Communication No. 694/1996, Views adopted in November 1999).

Rights of members of minorities, article 27

29. The protection of rights of members of minorities provided for by article 27 of the Covenant is closely connected with their protection against discrimination. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist,

persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee has pointed out that the rights conferred by this provision are distinct from, and additional to, the other rights which individual members of minority groups are already entitled to enjoy under the Covenant, including the right to equality and non-discrimination on racial, religious, linguistic or other grounds. On this basis it does not accept the claim advanced by some States parties that, because they do not discriminate on grounds of ethnicity, language or religion, they have no minorities to whom article 27 could apply (General Comment No. 23 on art. 27, para. 4).

30. The individuals protected by article 27 need not be citizens of the State party nor permanent residents (General Comment No. 23, paras. 5.1, 5.2). Nor does the Committee consider it compatible with article 27 to limit the recognition of minorities in certain ways, for example to linguistic minorities. The Committee has emphasized that the rights protected by article 27 apply to members of any minority group existing in a State who share in common a culture, a religion and/or a language (General Comment No. 23, para 5.1). Article 27 thus extends to the protection of the rights of members of indigenous minorities, as well as to migrants and members of all cultural, religious and linguistic minorities that exist in the State.

31. The exercise by persons belonging to minorities of rights protected by article 27 depends on the ability of the minority group to maintain its culture, language or religion. Because of this, positive measures by States may be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group (General Comment No. 23, para. 6.1). Any such measures should be non-discriminatory. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

32. In considering reports under article 40 of the Covenant, the Committee has called on States to take positive action where necessary to support the right of ethnic and religious minorities to pursue and develop their traditions, culture and language, to support cultural and ethnic diversity, to support educational and cultural rights, to secure language rights for minorities and to recognize the right to use minority languages in official communications.

33. Particular problems are experienced by members of indigenous minorities in enjoying their rights under the Covenant, including the right to enjoy their traditional culture. The Committee has found in its examination of State parties' reports that members of indigenous communities have often been denied equality, and that their enjoyment of rights has been seriously affected by long-standing racial discrimination. They may experience high levels of poverty and ill health, disadvantage in access to health care, education and employment. They often have a very low proportion of representation in public office and public service.

34. In its General Comment No. 23 on article 27, the Committee observed that culture may manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. The right to enjoy culture extends to

such traditional activities of indigenous communities as fishing or hunting and the right to live in reserves protected by law (General Comment No. 23, para. 7). See *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada* (Communication No. 167/1984, Views adopted on 26 March 1990) and *Kitok v. Sweden* (Communication No. 197/1985, Views adopted on 27 July 1988).

The Committee has stressed that the enjoyment of rights by indigenous minorities may require positive legal measures of protection, and that steps may need to be taken to ensure that indigenous people are able to participate effectively in decision-making which affects them, particularly in regard to the use of their traditional lands and resources and the sustainability of their traditional economic activities.

Summary of appendices

Appendix I

Communications

The Committee's Views on Communications submitted under the Optional Protocol to the Covenant:

Kitok v. Sweden (Communication No. 197/1985, Views adopted on 27 July 1988);

Gueye v. France (Communication No. 196/1985, Views adopted 3 April 1989);

Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada (Communication No. 167/1984, Views adopted on 26 March 1990);

Faurisson v. France (Communication No. 550/1993, Views adopted on 8 November 1996);

Waldman v. Canada (Communication No. 694/1996, Views adopted in November 1999);

Ross v. Canada (Communication No. 736/1997, Views adopted on 18 October 2000).

Appendix II

Concluding observations

Extracts from the concluding observations the Committee presented to the following States parties after considering their reports under article 40 of the International Covenant on Civil and Political Rights: Australia, Belgium, Brazil, Bosnia and Herzegovina, Cambodia, Canada, Chile, France, Germany, Guyana, Hungary, India, Ireland, Israel, Italy, Japan, Kuwait, New Zealand, Norway, Romania, Senegal, Slovakia, the Sudan, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United Kingdom of Great Britain and Northern Ireland (Hong Kong), United States of America, Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Appendix III

General comments

Extracts from the following General Comments in which the Committee has addressed questions relating to racism and related issues:

No. 11 (art. 20), reproduced in full;

No. 15 (The position of aliens under the Covenant), paragraphs 1 to 4; last part of paragraph 7;

No. 18 (Non-discrimination), reproduced in full;

No. 22 (The right to freedom of thought, conscience and religion, art. 18), paragraphs 1,2, 7, 8;

No. 23 (Protection of members of minorities, art. 27), reproduced in full;

No. 25 (Participation in the conduct of public affairs, art. 25), paragraphs 1 to 3, 21 and 23;

No. 27 (Liberty of movement, art. 12), paragraphs 1 to 7;

No. 28, (Equality of rights between men and women, art. 3), paragraphs 1 to 4; 30 to 32;

[For texts see also "*Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*", HRI/GEN/1/Rev.4 (2000)]

APPENDIX I

NOTES ON CASES ADOPTED BY THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Kitok v. Sweden, Communication No. 197/1985, Views adopted on 27 July 1988

The author, a Sami of Swedish nationality, complained that he had been arbitrarily denied his ancestral right to membership of the Sami community and to carry out reindeer breeding by his formal exclusion from the community. He claimed to be the victim of a violation of article 27 of the Covenant.

The Committee's view was that the regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under article 27 of the Covenant. It was not disputed that reindeer breeding was an essential component of the Sami culture. The restrictions had been imposed to protect the environment and continued existence of the indigenous Sami culture. The Committee noted that there was conflict between the protection of the minority as a whole and the application of the rules to individual members. It concluded that there was a reasonable and objective justification for the rule. The Committee found no violation of article 27.

(Similar principles were applied by the Committee in the case of *Mahuika et al v. New Zealand*, Communication No. 547/1993, Views adopted in October 2000).

Gueye v. France, Communication No. 196/1985, Views adopted on 3 April 1989

Seven hundred and forty-three retired soldiers of Senegalese nationality who had served in the French Army before independence had their pensions frozen by legislation in 1974. This law did not apply to former soldiers who were French citizens. The question for the Committee was whether it was compatible with the Covenant to distinguish between former members of the French Army, based on whether they were French nationals or not, in regard to their pensions.

The Committee found no evidence to support the allegation that the State party had engaged in racially discriminatory practices vis-à-vis the authors. Although nationality is not mentioned as a prohibited ground of discrimination in the Covenant, in the Committee's opinion the differentiation by reference to the nationality of the authors acquired upon independence fell within the reference to "other status", a ground covered by article 26. The difference in treatment was not based on reasonable and objective criteria and constituted discrimination prohibited by the Covenant. A violation of article 26 was found.

Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada, Communication No. 167/1984, Views adopted on 26 March 1990 (A/45/40, vol. II)

The author alleged violations by the Government of Canada of the Lubicon Lake Band's right of self-determination and, by virtue of that right, to determine freely its political status and pursue its economic, social and cultural development, as well as the right to dispose freely of its natural wealth and resources and not to be deprived of its own means of subsistence. The circumstances were that, despite laws and treaties, the Government of Canada had allowed the provincial government of Alberta to expropriate the territory of the Band for the benefit of private corporate interests, including leases for oil and gas exploration.

The Committee determined that it could not deal with the question of whether the Lubicon Lake Band was a "people" under the Optional Protocol and could not, therefore, consider whether their right to self-determination under article 1 of the Covenant had been violated. Nevertheless, groups of individuals claiming to be similarly affected could submit a communication about alleged breaches of their rights. The authors were not obliged to pursue remedies through litigation unless they were likely to be effective in restoring the traditional or cultural livelihood of the Lubicon Lake Band, which was at the time allegedly at the brink of collapse.

The Committee acknowledged that many of the claims presented by the authors raised issues under article 27, which protects the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong (para. 32.2). The Committee recognized (para. 33) that "historical inequities and more recent developments threaten the way of life and culture of the Lubicon Lake Band and constitute violation of the Band's collective right to enjoy its traditional way of life and culture, a violation of article 27 so long as they continue". The Committee noted that the State party proposed to rectify the situation by a remedy deemed appropriate.

Faurisson v. France, Communication No. 550/1993, Views adopted on 8 November 1996

The author in this case was convicted of an offence against the French law outlawing denial of the Holocaust. The background to his conviction was an interview given to a French magazine in which the author spoke of the "mythical" gas-chambers in Auschwitz and intimated that the Jews had invented the "myth" of the Holocaust for their own purposes. The author claimed that in convicting him for this offence the State party had violated his right to freedom of expression under article 19 of the Covenant. The Committee was unanimous in deciding that there had been no violation, although a number of members appended separate concurring opinions to the Committee's Views.

The Committee was of the opinion that, while the conviction of the author involved a restriction on his freedom of expression, this restriction was justified under article 19, paragraph 3. The rights in respect of which restrictions may be placed under this paragraph include not only the rights of individuals, but of groups too. Thus a restriction placed in order to

protect an ethnic, national or religious group's right not to be subjected to racial incitement may be a legitimate restriction. In this case the restriction on the author's freedom of expression was necessary in order to protect the Jewish community in France against anti-Semitism. In their concurring opinions, several members stressed the connection between the restriction placed on freedom of expression in this article and article 20, paragraph 2, of the Covenant, which obligates States parties to prohibit by law incitement to discrimination, hostility or violence.

Some members saw fit to emphasize that while a law that prohibits denial of "historical truths" is problematical, use of such a law in cases involving racial incitement is legitimate.

The Committee adopted a similar approach in the case of *Ross v. Canada*, (Communication No. 736/1997, Views adopted on 18 October 2000). In this case, the author, a teacher, had been removed from his teaching position by decision of a board of inquiry, because of repeated public statements which denigrated the faith and beliefs of Jews and called upon those of Christian faith not only to question the validity of Jewish beliefs and teachings but to hold individuals of Jewish faith and ancestry in contempt as undermining democracy, freedom and Christian beliefs and values. The Committee, following the reasoning in *Faurisson*, considered that the removal of the author from a teaching position could be considered as a restriction that was necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance.

Waldman v. Canada, Communication No. 694/1996,
Views adopted in November 1999

The author complained that he was the victim of discrimination by the Ontario Government because public funds were provided for Roman Catholic schools but not for schools of the author's religion. As a result, he had to meet the full cost of school education in a religious school.

The Committee rejected the argument of the State party that, because the preferential treatment of Roman Catholic schools was a constitutional obligation it could not be considered discriminatory. The differences in treatment between Roman Catholic religious schools which were publicly funded as a distinct part of the public education system and schools of the author's religion which were private by necessity could not be considered reasonable and objective. The Committee observed that the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination. In the absence of reasonable and objective criteria for providing funding for schools of one religion and not for those of another, the Committee found that the author's rights under article 26 had been violated.

APPENDIX II

EXCERPTS FROM RELEVANT CONCLUDING OBSERVATIONS

[website reference: www.unhchr.ch/tbs/doc.nsf]

Australia, 10/10/2000 (A/55/40, vol. I, paras. 498-528)

506. With respect to article 1 of the Covenant, the Committee takes note of the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard.

[Recognition of indigenous peoples' rights - article 27]

507. The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

508. The Committee is concerned, despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (*Mabo, 1992; Wik, 1996*) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, that in many areas native title rights and interests remain unresolved and that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands.

509. The Committee recommends that the State party take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

510. The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering) and protection of sites of religious or cultural significance for such minorities that must be protected under article 27, are not always a major factor in determining land use.

511. The Committee recommends that in the finalization of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), the State party should give sufficient weight to the above values.

512. While noting the efforts by the State party to address the tragedies resulting from the previous policy of removing indigenous children from their families, the Committee remains concerned about the continuing effects of this policy.

513. The Committee recommends that the State party intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy (arts. 2, 17 and 24).

[Discrimination - sentencing policies]

522. Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of indigenous persons in the criminal justice system, raises serious issues of compliance with various articles in the Covenant.

523. The State party is urged to reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected.

524. The Committee notes the recent review within Parliament of the State party's refugee and humanitarian immigration policies and that the Minister for Immigration and Multicultural Affairs has issued guidelines for referral to him of cases in which questions regarding the State party's compliance with the Covenant may arise.

526. The Committee considers that the mandatory detention under the Migration Act of "unlawful non-citizens", including asylum-seekers, raises questions of compliance with article 9, paragraph 1, of the Covenant, which provides that no person shall be subjected to arbitrary detention. The Committee is concerned at the State party's policy, in this context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organizations to the detainees in order to inform them of this right.

527. The Committee urges the State party to reconsider its policy of mandatory detention of "unlawful non-citizens" with a view to instituting alternative mechanisms of maintaining an orderly immigration process. The Committee recommends that the State party inform all detainees of their legal rights, including their right to seek legal counsel.

Belgium, 09/10/92 (A/47/40, paras. 395-430)

[Difference in rights enjoyed by aliens - articles 2 (1), 26]

429. Although noting the direct applicability of several provisions of the Covenant which form part of Belgian domestic law, the Committee is concerned about the difference between civil rights enjoyed by citizens and those enjoyed by aliens, which may lead to discrimination against aliens.

[Given effective protection to minorities - article 27]

430. The Committee also recommends that the State party further improve the effectiveness of the protection granted to minorities rights at the communal level.

Bosnia and Herzegovina, 07/10/93 (A/48/40, vol. I, paras. 311-332)

331. The Committee expressed its concern at the large number of killings, arbitrary arrests, detentions, the operation of prisons by private persons and the general mistreatment of persons.

332. The Committee recommends that the Republic of Bosnia and Herzegovina formalize its succession to the Covenant by submitting the appropriate notification to the Secretary-General of the United Nations. The Committee recommends that the measures already taken by the Republic should be further intensified and systematically monitored so as to ensure that ethnic cleansing does not take place, whether as a matter of revenge or otherwise; that prisoners are not taken for the purpose of eventual exchange of prisoners; that all places of detention are officially proclaimed; that records of all people detained are kept and made public; and that such places of detention are open to visits by the International Committee of the Red Cross and the families of the people detained. ... Administrative arrangements should be made to enable persons to retrace members of their family who have disappeared and prompt investigations should take place to bring all those responsible for violations to trial.

Brazil 13/04/97 (A/51/40, paras. 306-338)

[Racial discrimination, indigenous peoples - article 26; land rights of indigenous peoples - articles 1, 27]

320. The Committee is particularly concerned over the existence of racial and other discrimination against black and indigenous persons. It notes that the Government has been pursuing a process of demarcation of indigenous lands in Brazil as a means of addressing the rights of the indigenous communities but regrets that the process is far from completion.

[General discrimination - article 26]

332. The Committee recommends adoption of legislation that will prohibit discrimination on all the grounds covered by article 2 (1) of the Covenant.

Cambodia, 21/10/99 (A/54/40, vol. I, paras. 292-312)

[Distinction between citizens/aliens]

298. The Committee is concerned that under article 31 of the Constitution equal rights apply to "Khmer citizens" while other provisions protect the rights of "non-Khmer citizens".

The State party should ensure that Covenant rights are enjoyed without distinction.

Canada, 21/10/99 (A/54/40, vol. I, paras. 223-243)

[Indigenous land rights and resources - articles 1, 27]

230. The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.

[Discrimination by indigenous women - articles 26-27]

241. The Committee is concerned about ongoing discrimination against aboriginal women. Following the adoption of the Committee's Views in the *Lovelace* case in July 1981, amendments were introduced to the Indian Act in 1985. Although the Indian status of women who had lost status because of marriage was reinstituted, this amendment affects only the woman and her children, not subsequent generations, which may still be denied membership in the community. The Committee recommends that these issues be addressed by the State party.

Chile, 21/10/99 (A/54/40, vol. I, paras. 197-222)

[Indigenous culture-indigenous economic activities - article 27]

218. The Committee takes note of the various legislative and administrative measures taken to respect and ensure the rights of persons belonging to indigenous communities in Chile to enjoy their own culture. Nevertheless, the Committee is concerned by hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.

[General discrimination prohibition in public and private]

219. The Committee is concerned by the lack of comprehensive legislation that would prohibit discrimination in the public and private spheres, such as employment and housing. Under article 2, paragraph 3, and article 26 of the Covenant, the State party is under a duty to protect

persons against such discrimination. Legislation should be enacted to prohibit discrimination and provide an effective remedy to those whose right not to be discriminated against is violated. The Committee also recommends the establishment of a national defender of human rights or other effective agency to monitor the implementation of anti-discrimination legislation.

220. The special status granted in public law to the Roman Catholic and Orthodox churches involves discrimination between persons on account of their religion and may impede freedom of religion. The State party should amend the law so as to give equal status to all religious communities that exist in Chile.

France, 21/09/97 (A/52/40, paras. 388-415)

[Gender discrimination/religion and culture - articles 3, 26]

398. The Committee is concerned that in some overseas territories, such as Mayotte and New Caledonia, personal status is determined by religious or customary law, which might in some situations lead to discriminatory attitudes and decisions, especially against women. The Committee recommends that the State party undertake a comprehensive study to review the compatibility of the personal status of women in Mayotte, New Caledonia and other overseas territories with the provisions of the Covenant, particularly article 3, and, if needed, take appropriate measures to eliminate all existing inequalities.

[Discrimination in abuse of detainees and use of firearms - articles 2 (1), 6, 7, 26]

403. The Committee is seriously concerned at the number and serious nature of the allegations it has received of ill-treatment by law enforcement officials of detainees and other persons who come into contact with them, including unnecessary use of firearms resulting in a number of deaths, the risk of such ill-treatment being much greater in the case of foreigners and immigrants. It is also concerned at the reported increase in the number of suicides in detention centres. The Committee is concerned that in most cases there is little, if any, investigation of complaints of such ill-treatment by the internal administration of the police and the Gendarmerie nationale, resulting in virtual impunity. The Committee is concerned that no independent mechanism exists to receive individual complaints from detainees. The Committee recommends that the State party take appropriate measures to remedy this state of affairs and, *inter alia*, reduce the level of use of solitary confinement. The Committee also recommends that the State party establish an independent mechanism to monitor detention centres and to receive and deal with individual complaints of ill-treatment by law enforcement officials. The Committee urges the State party to introduce in the training of law enforcement officials at all levels a comprehensive course in human rights.

[Discrimination of minorities - articles 26, 27]

411. The Committee takes note of the Declaration made by France concerning the prohibition, prescribed under article 27 of the Covenant, to deny ethnic, religious or linguistic minorities the right, in community with members of their group, to enjoy their own culture, to profess and

practise their own religion or to use their own language. The Committee has taken note of the avowed commitment of France to respect and ensure that all individuals enjoy equal rights, regardless of their origin. The Committee is, however, unable to agree that France is a country in which there are no ethnic, religious or linguistic minorities. The Committee wishes to recall in this respect that the mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a country, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.

Germany, 21/09/97 (A/52/40, paras. 171-190)

[Discrimination of minorities/abuse by police - articles 7, 26]

181. The Committee expresses its concern that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum-seekers. In this regard, it is concerned that there is no truly independent mechanism for investigating complaints of ill-treatment by the police. The Committee therefore recommends the establishment of independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police.

[Racism, anti-Semitism and xenophobic attitudes - articles 20, 26]

182. Though the Committee finds that programmes of education of young people and training of police officers concerning racism, anti-Semitism and xenophobic attitudes have been started, it regrets that broader educational and training programmes in human rights values does not appear to have received the same level of support. The Committee also expresses its concern that despite significant efforts by the Government, racism, xenophobia and anti-Semitism still persist among certain segments of the population. The Committee thus recommends that efforts to educate youth and train the police that racism and xenophobia are violative of basic human dignity, contrary to fundamental values and constitutionally and legally impermissible should be intensified, and urges that such education and training should be placed in the wider context of human rights education and training. The Committee urges the Federal and Länder Governments to introduce courses in human rights in schools, colleges and universities and also in police and defence academies with a view to strengthening a culture of human rights.

[Defining cultural minorities - article 27]

183. The Committee is concerned that the definition of minorities as "ethnic or linguistic groups who have a traditional area of settlement in particular regions", as stated in paragraph 244 of the report, is much too restrictive in terms of article 27 of the Covenant. The Committee is of the view that article 27 applies to all persons belonging to minorities, whether linguistic, religious, ethnic or other, including those who are not concentrated or settled in a particular area or a particular region or who are immigrants or who have been given asylum in Germany.

[Religious discrimination - articles 18-26]

186. The Committee is concerned that membership in certain religious sects as such may in some Länder of the State party disqualify individuals from obtaining employment in the public service, which may, in certain circumstances, violate the rights guaranteed in articles 18 and 25 of the Covenant. The Committee also recommends the State party to discontinue the holding of "sensitizing" sessions for judges against the practices of certain designated sects.

Guyana, 10/10/2000 (A/55/40, vol. I, paras. 346-381)

377. The Committee is concerned at insufficient attention being paid to the need for multi-ethnicity within the police force, and at reports of considerable ethnic tension and at manifestation of incitement to discrimination, hostility or violence on racial grounds.

378. The State party should encourage recruitment to the police force of members of all ethnic communities, and ensure strict compliance with article 20 (2) of the Covenant by enforcing the prohibition of incitement to racial hostility and by taking measures to reduce ethnic tension between all the different groups in Guyana.

379. The Committee regrets the delay by the State party in amending the Amerindian Act, and is concerned that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law. It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, and that in some cases insufficient land is demarcated to enable them to pursue their traditional economic activities.

380. The State party should ensure that there are effective measures of protection to enable members of indigenous Amerindian communities to participate in decisions which affect them.

Hungary, 07/10/93 (A/48/40, paras. 617-665)

664. The Committee finally expresses its concern over the persistent pattern of prejudice and discriminatory attitudes towards certain minorities including, in particular, the Roma (gypsies), as well as the occurrence of some incidents arising from hostility and xenophobia towards aliens.

665. Adequate training in human rights norms should be provided for members of the judiciary and the legal profession, as well as police and prison officials, and human rights education should be included in the school and university curricula.

India, 21/09/97 (A/52/40, paras. 416-450)

430. The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, *inter alia* inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the caste system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination, it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance with articles 2, paragraph 1, and 26 of the Covenant.

Ireland, 07/10/93 (A/48/40, paras. 551-616)

[Discrimination between citizens and non-citizens, aliens]

609. The Committee notes with concern the existence of discriminatory distinctions between citizens by birth and those who are naturalized and the discriminatory treatment in some respects of non-nationals, including refugees and asylum-seekers.

615. The Committee suggests that the State party undertake additional affirmative action aimed at improving the situation of the "Travelling Community" and, in particular, facilitating and enhancing the participation of "travellers" in public affairs, including the electoral process.

Ireland, 10/10/2000 (A/55/40, paras. 422-451)

447. In regard to proposed changes to the law regarding asylum-seekers, the State party should ensure that the grounds on which detention may be authorized and the right of access to judicial review of detention decisions are in full conformity with the provisions of article 9 of the Covenant. It should also ensure that requirements relating to the place of residence of refugees do not infringe the rights to liberty of movement protected under article 12.

[Unequal treatment of minority groups - articles 26, 27]

448. With respect to the Travelling Community, the Committee continues to be concerned about the generally lower living standards of members of this community, their low levels of participation in national political and social life and their high levels of maternal and infant mortality.

449. The State party is urged to continue its efforts to take positive action to overcome discrimination and to ensure the equal employment or rights by members of the Travelling Community and in particular to improve their access to health, education and welfare services, including accommodation, and their participation in political and public life. The State party should also pursue actively programmes to change attitudes and to promote understanding between the Travelling and the settled communities (arts. 26, 27).

Israel, 15/09/98 (A/53/40, vol. I, paras. 297-328)

[Discrimination on grounds of national or ethnic origin]

308. The Committee expresses serious concern over deeply imbedded discriminatory social attitudes, practices and laws against Arab Israelis that have resulted in a lower standard of living compared with Jewish Israelis, as is evident in their significantly lower levels of education, access to health care, access to housing, land and employment. It notes with concern that most Arab Israelis, because they do not join the army, do not enjoy the financial benefits available to Israelis who have served in the army, including scholarships and housing loans. The Committee also expresses concern that the Arabic language, though official, has not been accorded equal status in practice, and that discrimination against members of the Arab minority appears to be extensive in the private sector. In this regard, the Committee urges the State party to take steps without delay to ensure equality to Arabs and to proceed as soon as possible with the planned formulation of a draft law on discrimination in the private sector and to adopt it at an early date.

Italy, 15/09/98 (A/53/40, vol. I, paras. 329-348)

[Racial discrimination and intolerance - article 26]

346. The Committee is concerned at the increase in incidents of racial intolerance. It recommends that all measures by way, for example, of legal constraint and education be continued to eradicate this phenomenon (arts. 3 and 26).

347. It is noted that delays continue to occur with respect to passing legislation concerning the following: the introduction of measures giving effect to further improvement of the rights of persons belonging to ethnic, religious and linguistic minorities and for the protection of the rights of the Slovenian minority (art. 27).

Italy, 21/09/94 (CCPR/C/79/Add.37; A/49/40, paras. 271-290)

[Racism and racial intolerance - articles 20, 26]

273. The Committee notes the emergence in certain parts of the population of Italy of a trend towards racism and intolerance against foreigners, particularly asylum-seekers and migrant workers, and the resurgence of certain elements militating in favour of political movements reminiscent of a past when human rights were seriously violated.

[Definition of minorities - article 27]

281. The Committee is concerned that the State party's definition of minorities is confined to linguistic minorities within its territory and that, consequently, members of other minorities may not enjoy equal protection of their rights under article 27.

Suggestions and recommendations

288. The Committee recommends that the State party continue to strengthen its education and training programmes on multi-culturalism with a view to eliminating racial discrimination.

Japan, 21/09/94 (A/49/40, vol. I, paras. 98-116)

[Discrimination of aliens - article 2 (1), 26]

106. The Committee expresses concern at the continued existence in Japan of certain discriminatory practices against social groups, such as Korean permanent residents, members of the Buraku communities, and persons belonging to the Ainu minority. The requirement that it is a penal offence for alien permanent residents not to carry documentation at all times, while this does not apply to Japanese nationals, is not consistent with the Covenant. Moreover, persons of Korean and Taiwanese origin who served in the Japanese Army and who no longer possess Japanese nationality are discriminated against in respect of their pensions.

[Discrimination/definition of concept of minorities - articles 26-27]

112. The Committee notes with concern the exclusion of Koreans from the Government's concept of minorities. This is not justified by the Covenant, which does not limit the concept of minority to those who are nationals of the State concerned.

Japan, 21/10/99 (A/54/40, vol. I, paras. 143-177)

[General prohibition of discrimination - article 26]

153. The Committee is concerned about the vagueness of the concept of "reasonable discrimination", which is incompatible with article 26 of the Covenant. In the absence of objective criteria, the Committee finds that the arguments advanced by the State party in support of this concept are unacceptable.

[Discrimination against members of minorities - articles 26, 27]

155. The Committee is concerned about instances of discrimination against members of the Japanese-Korean minority who are not Japanese citizens, including the non-recognition of Korean schools. The Committee draws the attention of the State party to General Comment No. 23 (1994) which stresses that protection under article 27 may not be restricted to citizens.

156. The Committee is concerned about the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.

157. With regard to the Dowa problem, the Committee acknowledges the acceptance by the State party of the fact that discrimination persists vis-à-vis members of the Buraku minority with regard to education, income and the system of effective remedies. The Committee recommends that the State party take measures to put an end to such discrimination.

Kuwait, 27/07/2000 (A/55/40, paras. 452-497)

[Definition and concept of minorities - article 27]

475. The Committee cannot accept the statement of the delegation that there are no minorities in Kuwait. Given the wide diversity of persons in the State party's territory and subject to its jurisdiction, it is clear that in fact there are persons in Kuwait who belong to ethnic, religious and linguistic minorities whose rights under article 27 of the Covenant should be ensured and protected.

[Unequal treatment of aliens - article 26]

477. The Committee remains gravely concerned about the treatment of the Bedoons (included in the category of stateless persons) in Kuwait, who number several thousand. In view of the fact that many of these people are born in Kuwait or have been living in Kuwaiti territory for decades and some are in the service of the Government, the Committee is gravely concerned over the sweeping statement of the delegation characterizing the Bedoons generally as "illegal residents". The Committee is concerned that many Bedoons long resident in Kuwait who left the country during the Iraqi occupation in 1990/91 are not permitted to return to Kuwait.

478. The State party must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination (art. 26). The right to remain in one's own country and to return to it must be scrupulously respected (art. 12).

479. The Committee is further concerned at the fact that the delegation did not refute allegations that Bedoons have been offered a five-year residence permit in exchange for renouncing any claims for naturalization and that the State party seeks to deport Bedoons to countries with which the person concerned has no effective links.

[Discrimination in award of nationality and voting rights - articles 25, 26]

480. The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (arts. 25, 26). The State party is urged to refrain from deporting residents on the basis of their classification as Bedoons who have failed to regularize their status.

481. The Committee is concerned about the lack of information concerning the situation of children of non-Kuwaiti parents living in Kuwait, in particular with regard to education, medical care, and the issuance of birth and death certificates. The Committee is further concerned that children who are born in Kuwait and whose parents are stateless or whose mother only has Kuwaiti nationality do not acquire any nationality.

483. The Committee is concerned about other instances of discrimination, in particular the naturalization of Muslim applicants exclusively. It is also concerned that the legal consequence of a conversion from Islam to another religion may result in the loss of Kuwaiti nationality.

484. The laws on naturalization and nationality should be amended to ensure that their application does not entail discrimination on any of the grounds enumerated in article 26 of the Covenant.

New Zealand, 03/10/95 (A/50/40, paras. 166-191)

178. The Committee regrets that the operation of the new prohibited grounds of discrimination, contained in section 21 of the Human Rights Act 1993, is postponed until the year 2000. It also notes with concern that the prohibited grounds of discrimination do not include all the grounds in the Covenant and, in particular, that language is not mentioned as a prohibited ground of discrimination.

[Discrimination, unequal treatment of indigenous groups - articles 26, 27]

182. The Committee regrets that despite improvements, Maori still experience disadvantages in access to health care, education and employment. The Committee is also concerned that the proportion of Maori in Parliament and other high public offices, liberal professions and in the senior rank of civil service remains low.

Norway, 21/09/94 (A/49/40, paras. 84-97)

Factors and difficulties affecting the implementation of the Covenant

[Racial intolerance - article 26]

87. The Committee notes the emergence in certain parts of the population of Norway of a trend towards intolerance against foreigners, particularly asylum-seekers and migrant workers.

Principal subjects of concern

92. The Committee expresses its concern over the vagueness of the criterion of "compelling social considerations" under which a foreign national's right to choose his or her place of residence may be restricted and its conformity with article 12 of the Covenant.

[Religious discrimination - articles 18, 26]

93. The Committee emphasizes that article 2 of the Constitution which provides that individuals professing the Evangelical-Lutheran religion are bound to bring up their children in the same faith is in clear contradiction with article 18 of the Covenant.

[Education/inequality of access for members of minorities - articles 26, 27]

94. The Committee notes that the authorities have included multicultural issues in education but is concerned that they have approached these issues only by reference to articles 2 and 26 of the Covenant. This gives a narrow interpretation of article 27 of the Covenant relating to the rights of persons belonging to minorities. The Committee has observed, in this regard, that the

rights conferred under article 27 of the Covenant on individuals who are members of a minority avail all such individuals on a State party's territory and must not, as enjoined by article 2, paragraph 1, of the Covenant, be restricted to nationals.

Norway, 10/10/1999 (A/55/40, vol. I, paras. 66-83)

80. With reference to the information in the report about alleged lack of proper reaction from law enforcement officials in cases of racial discrimination, the Committee recommends that the situation be thoroughly analysed and requests that further information be made available (art. 26).

[Indigenous land rights - unequal protection - articles 26, 27]

81. The Committee remains concerned that while legislative reform work in the field of Sami land and resource rights is in progress, traditional Sami means of livelihood, falling under article 27 of the Covenant, do not appear to enjoy full protection in relation to various forms of competing public and private uses of land. Lawsuits by private landowners leading to judicial prohibition of reindeer herding and high legal costs for the Sami are a particular concern in the absence of satisfactory legal aid.

Romania, 21/09/94 (A/49/40, vol. I, paras. 132-149)

140. The Committee expresses concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities and, in particular, offences committed as a result of incitement to ethnic or religious intolerance. This situation is especially threatening to vulnerable groups, such as the Roma (gypsies). The Committee is concerned that the Government has not been sufficiently active in combating such discrimination or effectively countering incidents of violence committed against members of minority groups.

145. The Committee recommends that further measures be taken to protect persons belonging to minority groups and to enable them to exercise their rights under the Covenant, including participation at all levels in public institutions. The Committee also recommends that the Government take more active steps to combat racist and xenophobic attitudes and promote tolerance and understanding among the various ethnic, religious and national groups in Romania. In this connection, a positive approach should be taken to counter negative attitudes in the media which are likely to reinforce racist attitudes among the public, particularly in regard to the Roma.

Romania, 21/10/99 (A/54/40, vol. I, paras. 360-377)

[Discrimination vis-à-vis minority - articles 26, 27]

365. The Committee expresses its concern about continuing discrimination against the Roma (arts. 26-27).

The State party should pursue further measures, both legislatively and in practice, to endure the rights of the Roma, in the public and private sector, particularly with respect to access to education and support for the Roma language.

Senegal, 15/09/98 (A/53/40, vol. I, para. 68)

[Recognition of minorities - article 27]

66. The Committee expresses its concern at the statement in the report that "there are no minorities in Senegal", and at the failure of the State party to provide information on the recognition and protection of religious and ethnic minorities in Senegal. In that regard:

The Committee recommends that the State party take legal and practical steps to recognize and protect religious and ethnic minorities, with a view to ensuring the rights guaranteed under article 27 of the Covenant. The Committee further suggests that the Government of Senegal take into consideration the Committee's General Comment No. 23 on this manner.

Slovakia, 21/09/97 (A/52/40, paras. 362-387)

375. The Committee recommends that: (a) priority be given to addressing discrimination, in particular through training and education campaigns; and (b) mechanisms to monitor non-discrimination laws and to receive and investigate complaints from victims urgently be established.

[Racial intolerance vis-à-vis minorities - articles 20-27]

376. The Committee is concerned about reports that Roma people are often victims of racist attacks, without receiving adequate protection from law enforcement officers.

385. With respect to article 27 of the Covenant, the Committee notes with concern that no steps have yet been taken to adopt legislation to implement articles 6 (b) and 34, paragraph 2 (b), of the Constitution on the use of minority languages after the annulment of the 1990 Act on the Official Language, and that, as a consequence, the use of minority languages in official communications is not secure. Therefore: the Committee recommends that legislation be rapidly adopted to secure language rights for minorities. The Committee is concerned that insufficient provision, in particular in relation to allocation of resources, is made in the field of educational and cultural rights for the benefit of the Hungarian minority.

Sudan, 15/09/98 (A/53/40, vol. I, paras. 112-136)

115. The lack of reconciliation between different racial, religious, cultural and legal traditions in the north and the south of the Sudan appears to be a factor affecting the implementation of the Covenant.

[Give effective protection to minorities - article 27]

131. The Committee is concerned that there is no recognition in law of the right to use local languages in official communications or administrative or court proceedings, and that religious

minorities can be adversely affected by a range of discretionary administrative actions which can include the destruction of schools and educational facilities under town planning regulations. Therefore: emphasis should be given to the need of ethnic and religious minorities, wherever they reside in the Sudan, to pursue and develop their traditions, culture and language, as required by article 27 of the Covenant.

Sweden, 13/04/97 (A/51/40, paras. 73-98)

Positive aspects:

[Local remedies against discrimination - article 2 (1), 26]

77. The Committee welcomes the adoption of provisions prohibiting ethnic discrimination in the labour market as well as the additional powers given to the Ombudsman against Ethnic Discrimination by conferring upon him a litigating role in the Labour Court proceedings. It also welcomes the setting up of two parliamentary commissions on migration and immigration policies to identify gaps in legislation and to consider improvements in that regard, as well as the incorporation into the Penal Code of the concept of aggravating circumstances when a crime has had racial, ethnic, religious or other similar motivations.

90. The Committee notes that legislative provisions adopted recently by the Riksdag, and providing for the right for everyone to fish and hunt on public lands may have adverse consequences on the traditional rights of the members of the Sami people.

[Racism and xenophobic attitudes - articles 20, 26]

95. The Committee strongly urges the Government to take appropriate measures to fight the emergence of racist and xenophobic attitudes among some elements of Swedish society. The Committee particularly stresses the importance, in that regard, of educational campaigns in schools and at all levels of society and of media campaigns aimed at building a society where diverse cultures can coexist in a spirit of harmony and enrich one another.

[Customary rights of minorities - article 27]

98. The Committee recommends that the recognized customary rights of the Sami people be fully protected in the light of article 27 of the Covenant.

Switzerland, 21/09/97 (A/52/40, paras. 86-116)

[Discrimination in abuse of detainees - articles 7, 26]

98. The Committee is concerned at the numerous allegations of ill-treatment in the course of arrests or police custody, particularly in respect of foreign nationals or Swiss citizens of foreign origin and, in conjunction with them, reports on the authorities' failure to follow up complaints of ill-treatment by the police and the disproportionate nature, if not absence, of penalties.

102. While taking note of the delegation's statement that the provision is no longer enforced, the Committee emphasizes that the Decree of the Federal Council of 1948 concerning political speeches by foreigners restricts the freedom of expression of foreigners who do not have a permanent residence permit in a manner contrary to article 19 of the Covenant.

United Kingdom of Great Britain and Northern Ireland
03/10/95 (A/50/40, paras. 408-435)

[General prohibition of discrimination - articles 3, 26]

421. The Committee notes with concern that members of some ethnic minorities, including Africans and Afro-Caribbeans, are often disproportionately subjected to stop and search practices that may raise doubts under the non-discriminatory provisions of the Covenant, particularly its articles 3 and 26.

425. The Committee is concerned at the levels of support offered for the protection of cultural and ethnic diversity within the United Kingdom. The Committee further notes with concern that many persons belonging to minorities frequently feel that acts of racial harassment are not pursued by the competent authorities with sufficient rigor and efficiency. The Committee also regrets the lack of success in the adequate recruitment of ethnic minorities into the police. It further believes that much remains to be done to effect changes in public attitudes and to combat and overcome racism.

433. The State party is urged to take further action to tackle remaining problems of racial and ethnic discrimination and of social exclusion. A concerted campaign is called for, to address issues of research, juvenile and adult education, recruitment policies for the public and private sectors, legislative initiative and law enforcement.

United Kingdom of Great Britain and Northern Ireland - Hong Kong,
13/04/97 (A/51/40, paras. 47-72)

[Language-based discrimination - article 26]

58. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charge forms and charge sheets as well as court documents are in English only, though efforts are being made to make Chinese versions available.

66. The Committee recommends that efforts be accelerated to introduce, as soon as possible, Chinese versions of official charge forms and charge sheets as well as court documents.

United States of America, 03/10/95, A/50/40, paras. 266-304

Factors and difficulties affecting the implementation of the Covenant

270. The Committee notes that, despite the existence of laws outlawing discrimination, there persist within society discriminatory attitudes and prejudices based on race or gender.

Furthermore, the effects of past discriminations in society have not yet been fully eradicated. This makes it difficult to ensure the full enjoyment of the rights provided for under the Covenant to everyone within the State party's jurisdictions.

[Entitlement to recognition of aboriginal/native rights - article 27]

290. The Committee is concerned that aboriginal rights of Native Americans may, in law, be extinguished by Congress. It is also concerned by the high incidence of poverty, sickness and alcoholism among Native Americans, notwithstanding some improvements achieved with the Self-Governance Demonstration Project.

291. The Committee notes with concern that information provided in the core document reveals that disproportionate numbers of Native Americans, African Americans, Hispanics and single parent families headed by women live below the poverty line and that one in four children under six live in poverty. It is concerned that poverty and lack of access to education adversely affect persons belonging to these groups in their ability to enjoy rights under the Covenant on the basis of equality.

302. The Committee recommends that steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished. The Committee urges the Government to ensure that there is a full judicial review in respect of determinations of federal recognition of tribes. The Self-Governance Demonstration Project and similar programmes should be strengthened to continue to fight the high incidence of poverty, sickness and alcoholism among Native Americans.

Yugoslavia, 09/10/92 (A/47/40, paras. 431-469)

466. The Committee expresses its gravest concern with regard to the atrocities committed during the interethnic conflicts. It is disturbed by the many violations of human rights protected by the Covenant, which are to be safeguarded whatever the circumstances (rights to life and prohibition of torture in particular). [...] The Committee regrets the extremely low number of inquiries made into these violations, the failure to take measures to punish the guilty and prevent any recurrence of such acts, and the consequent impunity of those responsible.

468. The Committee also expresses its concern over the deterioration in the situation of ethnic, religious and linguistic minorities, particularly those of Albanian and Hungarian origin, and the population groups which have become de facto minorities as a result of recent interethnic conflicts.

469. In view of the serious situation prevailing in the State party, the Committee recommends that the Government take all necessary measures to stop violations of human rights, particularly those relating to the right to life and prohibitions of torture. These measures should include re-establishment of control over the army, dissolution of paramilitary militias and groups, punishment of those guilty of violations and adoption of measures to prevent a recurrence of such abuses. The Committee also recommends full application of article 27 of the Covenant, which recognizes the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language.

Federal Republic of Yugoslavia (Serbia and Montenegro), 07/10/93 (A/48/40, vol. I, paras. 363-389)

386. Various concordant sources of information [...] describe mass arrests, summary and arbitrary executions, enforced or involuntary disappearances, torture, rapes and looting committed by Serbian nationalists both in Croatia (Krajina) and in Bosnia and Herzegovina. It is reported that some 20 camps are controlled by these armed men and that they are holding thousands of civilians, women, children and elderly people in conditions unworthy of the respect due to the human person. Massive violence has been unleashed, *inter alia*, against Dubrovnik and Vukovar and is still being directed against Sarajevo. The Committee observed that the means deployed and the interests involved demonstrated the existence of links between the nationalists and Serbia which invalidated the Federal Government's claim to be exempt from responsibility.

387. According to the Special Rapporteur of the Commission on Human Rights, the purpose of these acts is to displace or eliminate Muslims, Croats or other nationalities and thus constitute ethnically homogeneous areas.

389. The Committee firmly urged the Federal Government to put an end to this intolerable situation for the observance of human rights, and to refrain from any support for those committing such acts, including in territory outside the Federal Republic of Yugoslavia (Serbia and Montenegro). It called upon the Government to show a clear political will and to effectively dissociate itself from the Serbian nationalist movements by totally repudiating their ideology and condemning their schemes. The Committee considers that a show of unwavering firmness on this point would deprive the extremists of support that is essential to them. The Federal Government was invited to do its utmost to foster public awareness of the need to combat national hatred and to crack down forcefully on the perpetrators of violations of individual rights by bringing them to justice. The Committee also recommended that the Federal Government put an end to the repression of the Albanian population in the province of Kosovo and adopt all necessary measures to restore the former local self-government in the province.

APPENDIX III

COMPILATION OF RELEVANT GENERAL COMMENTS

[Web site reference: www.unhchr.ch/tbs/doc.nfs]

GENERAL COMMENT No. 11

Prohibition of propaganda for war and inciting national, racial or religious hatred (Article 20)

(Nineteenth session - adopted on 29 July 1983)

1. Not all reports submitted by States parties have provided sufficient information as to the implementation of article 20 of the Covenant.

In view of the nature of article 20, States parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein.

However, the reports have shown that in some States such actions are neither prohibited by law nor are appropriate efforts intended or made to prohibit them. Furthermore, many reports failed to give sufficient information concerning the relevant national legislation and practice.

2. Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities.

The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations.

For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfil the obligations contained in article 20, and should themselves refrain from any such propaganda or advocacy.

GENERAL COMMENT No. 15

The position of aliens under the Covenant

(Twenty-seventh session, 1986)

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1).

In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof.

This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail.

In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.

7. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

GENERAL COMMENT No. 18

Non-discrimination

(Thirty-seventh session, 1989)

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, *inter alia*, that those measures should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.

5. The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that

spouses have equal rights as required by the Covenant. In relation to children, article 24 provides that all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.

6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which as the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where

the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. it prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate - under the Covenant.

GENERAL COMMENT No. 22

The right to freedom of thought, conscience and religion (Article 18)

(Forty-eighth session - adopted on 30 July 1993)

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominantly religious community.

...

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

GENERAL COMMENT No. 23

The rights of minorities
(Article 27)

(Fiftieth session, 1994)

1. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.

2. In some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant. Further, in reports submitted by States parties under article 40 of the Covenant, the obligations placed upon States parties under article 27 have sometimes been confused with their duty under article 2.1 to ensure the enjoyment of the rights guaranteed under the Covenant without discrimination and also with equality before the law and equal protection of the law under article 26.

3.1. The Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol.[1]

3.2. The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources.[2] This may particularly be true of members of indigenous communities constituting a minority.

4. The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2.1 and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not.[3] Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.

5.1. The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

5.2. Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with

members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.

5.3. The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14.3 (f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14.3 (f) does not, in any other circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings.[4]

6.1. Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a "right" and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the right guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.[5] The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

8. The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.

9. The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end.

GENERAL COMMENT No. 25

The right to participate in public affairs, voting rights and the right of equal access to publiic service (Article 25)

(Fifty-seventh session, 1996)

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

2. The rights under article 25 are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should

indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

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21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

...

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

...

GENERAL COMMENT No. 27

Freedom of movement
(Article 12)

(Sixty-seventh session, 1999)

1. Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant, as is often shown in the Committee's practice in considering reports from States parties and communications from individuals. Moreover, the Committee in its General Comment No. 15 ("The position of aliens under the Covenant", 1986) referred to the special link between articles 12 and 13.1.

2. The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.

3. States parties should provide the Committee in their reports with the relevant domestic legal rules and administrative and judicial practices relating to the rights protected by article 12, taking into account the issues discussed in the present general comment. They must also include information on remedies available if these rights are restricted.

Liberty of movement and freedom to choose residence (para. 1)

4. Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence. In principle, citizens of a State are always lawfully within the territory of that State. The question whether an alien is "lawfully" within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State's international obligations. In that connection, the Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12.2. Once a person is lawfully within a State, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals, have to be justified under the rules provided for by article 12, paragraph 3.3. It is, therefore, important that States parties indicate in their reports the circumstances in which they treat aliens differently from their nationals in this regard and how they justify this difference in treatment.

5. The right to move freely relates to the whole territory of a State, including all parts of federal States. According to article 12, paragraph 1, persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place. Any restrictions must be in conformity with paragraph 3.

6. The State party must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference. In the case of women, this obligation to protect is particularly pertinent. For example, it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative.

7. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by article 9 of the Covenant. In some circumstances, articles 12 and 9 may come into play together.[4]

GENERAL COMMENT No. 28

Equality of rights between men and women (Article 3)

1. The Committee has decided to update its General Comment on article 3 of this Covenant and to replace General Comment 4 (thirteenth session 1981), in the light of the experience it has

gathered in its activities over the last 20 years. This revision seeks to take account of the important impact of this article on the enjoyment by women of the human rights protected under the Covenant.

2. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently, States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.

3. The obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that States parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of State officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

4. States parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.

...

30. Discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. States parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way, and include information on the measures taken to counter these effects.

31. The right to equality before the laws and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields. Discrimination against women in areas such as social security laws - case 172/84, Broeks v. Netherlands (views of 9 April 1987; case 182/84, Zwaan de Vries v. the Netherlands (views of 9 April 1987); case 218/1986, Vos v. the Netherlands (views of 29 March 1989) - as well as in the area of citizenship or rights of non-citizens in a country - case 035/1978, Aumeeruddy-Cziffra et al. v. Mauritius (views adopted 9 April 1981) - violates article 26. The commission of so-called "honour crimes" which remain unpunished, constitutes a serious violation of the Covenant and in particular of articles 6, 14 and 26. Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment. The Committee has also often observed in reviewing States reports that a large proportion of women are employed in areas which are not protected by

labour laws, that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to equal pay for work of equal value. States should review their legislation and practices and take the lead in implementing all measures necessary in order to eliminate discrimination against women, in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.

32. The rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to equal enjoyment by women of any Covenant rights, including the right to equal protection of the law. States should report on any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant - Case 24/1977 Lovelace v. Canada (views adopted July 1981) - and on measures taken or envisaged to ensure the equal right of men and women to enjoy all civil and political rights in the Covenant. Likewise, States should report on measures taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women. In their reports, States parties should pay attention to the contribution made by women to the cultural life of their communities.

Notes

[1] See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), annex VI, General Comment No. 12 (21) (article 1), also issued in document CCPR/C/21/Rev.1; ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. A, Communication No. 167/1984 (Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada), views adopted on 26 March 1990.

[2] See ibid., Forty-third Session, Supplement No. 40 (A/43/40), annex VII, sect. G, Communication No. 197/1985 (Kitok v. Sweden), views adopted on 27 July 1988.

[3] See ibid., Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. D, Communication No. 182/1984 (F.H. Zwaan-de Vries v. the Netherlands), views adopted on 9 April 1987; ibid., sect. C, Communication No. 180/1984 (L.G. Danning v. the Netherlands), views adopted on 9 April 1987.

[4] See ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A, Communication No. 220/1987 (T.K. v. France), decision of 8 November 1989; ibid., sect. B, Communication No. 222/1987 (M.K. v. France), decision of 8 November 1989.

[5] See notes 1 and 2 above, Communication No. 167/1984 (Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada), views adopted on 26 March 1990, and Communication No. 197/1985 (Kitok v. Sweden), views adopted on 27 July 1988.